

Louisiana Law Review

Volume 65 | Number 2
Winter 2005

Smith v. LASERS: The Louisiana Supreme Court Adjusts a Legislative Miscalculation

Michael A. Cancienne

Repository Citation

Michael A. Cancienne, *Smith v. LASERS: The Louisiana Supreme Court Adjusts a Legislative Miscalculation*, 65 La. L. Rev. (2005)
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Smith v. LASERS: The Louisiana Supreme Court Adjusts a Legislative Miscalculation

In *Smith v. LASERS*, the Louisiana Supreme Court adopted an outdated approach to state employees' rights in public retirement systems when it construed the benefits derived from public retirement programs as mere gratuities. Additionally, the Court embraced the incorrect Contract Clause analysis when considering claims involving the State altering its own obligations. The majority of other states now recognize that rights exist in public retirement systems from the moment that employees enter the system. The Louisiana Supreme Court should have embraced this view, especially in light of the wording of Article X, Section 29 of the Louisiana Constitution which specifically recognizes membership in a statewide retirement system as contractually based.

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INTRODUCTION

In *Smith v. Board of Trustees of Louisiana State Employees' Retirement System (Smith v. LASERS)*,¹ the Louisiana Supreme Court denied 161 Department of Corrections' workers certain retirement benefits that were statutorily provided for them at the time of their retirement. Primarily at issue in the case was whether such benefits should be considered contractual in nature. In concluding that the

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1. *Smith v. Bd. of Trustees of Louisiana State Employees' Ret. Sys.*, 2002-2161 (La. 2003), 851 So. 2d 1100., *rehearing denied, cert. denied*, 540 U.S. 1179, 124 S. Ct. 1414 (2004).

workers had no rights in the benefits, the Court embraced the outdated idea that public retirement systems are mere gratuities, subject to unconstrained legislative modification. This casenote questions the Louisiana Supreme Court's decision to embrace such an outdated view of retirement benefits. Additionally, this casenote suggests that the Court should have abandoned the classification scheme it embraced and given public retirement benefits greater protection, as outlined in the Louisiana Constitution and followed by the bulk of other states. While suggesting the Court's view of retirement benefits is outdated and fails to give proper deference to the Louisiana Constitution of 1974, this casenote questions the Contract Clause analysis embraced by the Court in *Smith v. LASERS* and suggests had the Court embraced the proper test, the outcome may have been different.

In Part I, this casenote sets the stage for the debate by outlining the relevant parties and the applicable statutory and constitutional provisions at issue in *LASERS*. Part II then presents the Court's opinion. This section will establish the rationale the Court adopted when deciding *LASERS*. Part III highlights the differences between the majority and dissenting opinions regarding the classification of the benefits provided for by the statute in question, establishing that the majority's view of the benefits provided for by the statute in question was misguided and provided inadequate protection to state employees in light of the constitutional provisions protecting such benefits. Part IV examines the differing standards applied by the Court regarding the Contract Clauses of the Louisiana and United States Constitutions. This section will discuss the erroneous Contract Clause standard adopted by the majority, and how the outcome of the case may have differed had the Court applied the correct standard. Finally, Part V looks to other states to provide insight into the determination the Court should have embraced regarding the classification of retirement benefits. From this, this casenote will show the Louisiana Supreme Court erred when deciding *Smith v. LASERS*, primarily because the majority incorrectly classified the benefits provided for by the statute in question and misapplied the Contract Clauses of the Louisiana and United States Constitutions.

I. RETIREMENT POWER STRUGGLES: THE FACTUAL AND STATUTORY BACKGROUND OF *SMITH V. LASERS*

Because of the nature of public employment,² stable and relatively financially advantageous retirement benefits are typically earned by state workers. Maintaining a productive workforce is partially

2. See *infra* note 63–64 and accompanying text.

dependent upon these benefits. *Smith v. LASERS* considered the extent that the legislature can alter a statutorily provided retirement benefit and when the legislature may alter such a benefit.

A. The Plaintiffs: One-hundred sixty-one Department of Corrections Workers

With an eye on taking advantage of a law constructed to their benefit, 161 Louisiana Department of Corrections workers retired between January and March of 2002.³ These workers were soon rehired, again entering state service and the state retirement system pursuant to the law at the time. Many of the workers did not miss a single day of work, retiring on Friday and returning to work on the following Monday.⁴ For operations of the Department of Corrections facilities, it was as if the workers had never retired.⁵

While the workers' retirement did not affect the operation of the Department of Corrections, the workers' status as employees of the Department was affected because of their decision to retire. When the workers returned to work, they were treated as new employees and placed on probation for six months in accordance with the applicable Civil Service rules. However, even though the employees were treated as new employees, this was presumable only for administrative purposes, as none of the employees complained about a reduction in responsibility or rank. During this probationary period, the workers were not entitled to the same process with regard to their dismissal as they were before their retirement.⁶

The workers also lost portions of their accumulated sick and annual leave when they retired. Sick or annual leave in excess of 300 hours was counted as service credit, but leave up to 300 hours was lost.⁷ The

3. *Smith*, 851 So. 2d 1100.

4. Record at 135, *Smith*, 851 So. 2d 1100 (testimony of Shannon Templet). Ms. Templet is employed in the Human Resources Department of the Department of Corrections. Her testimony was used to provide a clearer understanding of the financial ramifications of the plaintiffs' retirements.

5. *Id.*

6. *Id.* at 83. When a new state employee is hired, their first six months are considered probationary, and the employee can be dismissed without cause. None of the 161 workers complained at trial or on appeal of being dismissed without cause, so reliance on this as an impairment to reemployment is suspect.

7. *Id.* at 100. While the employees received "service credit" for their leave, the credit is not momentarily equal to the employee actually utilizing the leave. For example, Mr. Gregg Smith testified he had in excess of twelve-hundred hours of accumulated leave available and received one year's service credit for the hours. His expected retirement benefit was \$19,000 while his expected salary was \$52,000. Should Mr. Smith get ill after being reemployed under the law at the time, he would not have any leave available and would be able to only receive his retirement benefits. *Id.* at 101-02.

employees also lost all of their compensatory time.⁸ The 161 workers lost over 11,800 hours of compensatory time.⁹

Lastly, for the workers who retired and did not return to work immediately (even those workers who missed only one day), their “anniversary dates” were changed.¹⁰ Such a change negatively affected when the worker would receive their annual four percent pay raise. Some of the workers had their anniversary dates deferred for more than three months.¹¹

B. The Defendant: The Louisiana State Employees’ Retirement System

LASERS is an executive branch agency¹² that enjoys the privileges and powers of a corporation,¹³ and was founded by the legislature in 1946.¹⁴ It is designed as a “trust fund created to provide retirement and other benefits for state officers and employees and their beneficiaries” and manages more than \$6 billion in assets.¹⁵ LASERS receives its funding from state employees, employers’, and interest earnings.¹⁶

C. Louisiana Revised Statutes 11:416: Designating Benefits for Retired State Employees who Reenter State Service

The benefits retired state employees receive are outlined in Title II of the Louisiana Revised Statutes.¹⁷ Title II is a consolidation of previous law enacted to “effectively comply with the mandate of

8. *Smith v. LASERS*, 2002–2161 (La. 2003), 851 So. 2d 1100, 1110 n.7. Compensatory time is time that the employer credits to a worker in lieu of overtime and can be used as sick or annual leave, but is not credited as service time upon retirement. According to Ms. Templet, “Once you separate from state service, you lost . . . your compensatory time and you can’t get it back even if you are reemployed.” Record at 131 (testimony of Shannon Templet).

9. *Smith*, 851 So. 2d at 1115 (Knoll, J., dissenting). Mr. Gregg Smith, the plaintiff and a Department of Corrections employee for over twenty-five years, had over a week worth of compensatory time. Record at 97.

10. Record at 134 (testimony of Shannon Templet).

11. *Id.* at 135.

12. *Id.* at 132.

13. Petition, *Smith*, 851 So. 2d 1100. *See also* La. Op. Att’y Gen. No. 93–676 (1993) (recognizing that statewide retirement systems can be considered to be state agencies, or at a minimum, entities of the state).

14. *See* Louisiana State Employees’ Retirement System, at <http://www.lasers.state.la.us>.

15. *See id.*

16. *See id.*

17. Louisiana Revised Statutes 11:1 (2004).

Article X, Section 29(E)" of the Louisiana Constitution.¹⁸ The state employees' retirement system (LASERS) is governed pursuant to Louisiana Revised Statutes 11:400–606. Membership in the statewide retirement system is determined by the legislature.¹⁹

1. Pre-2001: Options for Employees Choosing to Reenter State Service

When a state employee enrolled in LASERS reenters state service, their benefits are dictated pursuant to Louisiana Revised Statutes 11:416.²⁰ Prior to June 30, 2001, Louisiana Revised Statutes 11:416 offered three options to retired state employees who chose to return to state employment (reemployed retirees).²¹ Option 1 allowed for the reemployed retiree to continue to receive their pension benefits until the reemployed retiree earned more than fifty percent of his or her annual allowance from LASERS during any fiscal year. A reemployed retiree's benefit would be reduced by any amount in excess of fifty percent of their annual benefit from LASERS. A retiree who chose Option 1 could not re-enroll in LASERS and earn additional service time towards retirement upon reemployment.²²

Option 2 allowed a reemployed retiree to regain membership in LASERS as if the reemployed retiree had never retired, but the retiree had to repay any benefits, plus interest, received from LASERS.²³ The reemployed retiree also had to pay an amount equal to what the employer and the employee contributions would have been for the time the reemployed retiree had been out of state service.²⁴ Under Option 2, after repaying the State, the reemployed retiree was considered to have never retired.

Under Option 3, a reemployed retiree could request immediate suspension of their benefits and be re-enrolled in LASERS on the first day of reemployment. If the reemployed retiree worked at least thirty-six months, their benefit would be supplemented by the additional service. The reemployed retiree's benefits were restored

18. *Id.* 11:2.

19. *Id.* 11:412.

20. *Id.* 11:416.

21. *Id.* 11:416 (1995).

22. *Id.* 11:416(A)(1). For example, under Option 1, of an reemployed retiree who was receiving an annual benefit from LASERS of \$20,000, the reemployed retiree could continue to receive their annual allowance from LASERS until they made more than \$10,000. The reemployed retirees benefit from LASERS would be reduced by whatever he made in excess of \$10,000.

23. *Id.* 11:416(A)(2).

24. *Id.* Under Option 2, to reenter the LASERS program, the reemployed retiree had to purchase the time they had been away from state service and repay any benefits they received from LASERS.

as if the employee had never retired upon subsequent retirement.²⁵ Under Option 3, if the reemployed retiree did not complete thirty-six months of additional service, their retirement benefits upon their second retirement from state service was determined by the service accrued at their first retirement.

2. Act 455: Providing a Generous Opportunity for Retired State Employees

Act 455 of the 2001 Regular Legislative Session modified Louisiana Revised Statutes 11:416, eliminating the three options previously available to reemployed retirees.²⁶ Under the modification, a reemployed retiree was eligible for both retirement benefits and their total compensation from their state employer. After reemployment, a reemployed retiree's retirement would be suspended for twelve months. After the twelve-month suspension, the reemployed retiree would receive both their annual allowance from LASERS and their compensation from the state employer.²⁷ Further, if a reemployed retiree reentered state service for over thirty-six months, his or her retirement allowance was increased "by an amount that is attributable to the service that occurred during reemployment and the average compensation that is calculated for the period of such reemployment."²⁸ Act 455 became effective on June 30, 2001. The plaintiffs retired pursuant to Louisiana Revised Statutes 11:461 as amended by Act 455.²⁹

3. The 2002 Amendments to Louisiana Revised Statutes 11:416: The Legislature Reconsiders Its Generous Opportunity.

Act 165 of the 2002 First Extra-Ordinary Session amended Louisiana Revised Statutes 11:461, repealing the amendments made by Act 455 of the 2001 Regular Legislative Session.³⁰ Act 165 became effective May 9, 2002. Retired employees who reenter state service would again have to choose between three options with regard to how their retirement benefits would be affected by reemployment.³¹

In addition to repealing the changes made by Act 455 for future reemployed retirees, Act 165 added Louisiana Revised Statutes

25. *Id.* 11:416(A)(3).

26. 2001 La. Acts No. 455.

27. *Id.*

28. *Id.*

29. *Petition, Smith v. LASERS*, 2002-2161 (La. 2003), 851 So. 2d 1100.

30. 2002 La. Acts No. 165.

31. *Id.*

11:416.1.³² Louisiana Revised Statutes 11:416.1 speaks specifically to those employees who retired after June 30, 2001 and were rehired before May 9, 2002, including the Department of Correction officers involved in *Smith v. LASERS*. Louisiana Revised Statutes 11:416.1 forces reemployed retirees to choose between four "irrevocable options."³³ The first three options are the options enumerated in Louisiana Revised Statutes 11:416 as amended by Act 165. The fourth option allows a reemployed retiree to receive his retirement benefits after a twelve-month suspension but prevents the employee from continuing to contribute to the retirement system and accruing additional service time.³⁴ All four options differ from the plan offered to state employees who retired and were reemployed between June 30, 2001 and May 9, 2002. Reemployed retirees would no longer be able to receive both their employment benefits and retirement benefits while continuing to contribute to statewide retirement systems as previously provided. Act 165 also gave state employees who had retired and been rehired before May 9, 2002 thirty days to decide on which of the four irrevocable options they would choose.³⁵ If the reemployed retirees did not choose between one of the four options, they would be placed in Option 3, the "default category."³⁶

II. *SMITH V. LASERS*: THE LOUISIANA SUPREME COURT ADDRESSES THE CONSTITUTIONALITY OF LOUISIANA REVISED STATUTES 11:416 AND 11:416.1

Against the factual and legislative backdrop outlined in the previous sections, the Louisiana Supreme Court was presented with an

32. Louisiana Revised Statutes 11:416.1 (2004) provides:
A retiree who retired under the provisions of Act No. 455 of the 2001 Regular Session and was rehired prior to the effective date of this Section in employment which otherwise would render him eligible for membership in the system shall choose one of the following irrevocable options:

(1) Option 1 as provided for in RS 11:416(A)

(2) Option 2 as provided for in RS 11:416(A)

(3) Option 3 as provided for in RS 11:416(A)

(4) Option 4. At the request of the retiree his retirement benefits shall be suspended for twelve months following the effective date of his retirement or until his reemployment ends, whichever occurs first. The retiree shall receive his retirement benefits after such suspension, but he shall accrue no additional service credit during reemployment. Under this option, neither the retiree nor the employer shall make any contribution to the system.

33. *Id.*

34. *Id.* 11:416.1(4).

35. 2002 La. Acts No. 165.

36. *Id.*

opportunity to resolve issues central to the system of state employee retirement. Tantamount in this would be determining at what point the relationship between state employees and statewide public retirement systems becomes contractual. In *Smith v. LASERS*, the Louisiana Supreme Court would also have an opportunity to consider the meaning of Article X, Section 29 of the Louisiana Constitution of 1974 which provides that membership in a statewide retirement system shall be contractual.

A. Procedural History

On May 28, 2002, 161 Department of Corrections officers (the plaintiffs) filed suit seeking a judgment declaring Louisiana Revised Statutes 11:416.1 unconstitutional. The plaintiffs had retired and were reemployed between June 30, 2001 and May 9, 2002, pursuant to Louisiana Revised Statutes 11:416. The plaintiffs argued that Louisiana Revised Statutes 11:416.1 was unconstitutional because it violated the Contract Clauses of the Louisiana and United States Constitutions.³⁷

On June 26, 2002, the Nineteenth Judicial District Court ruled in the plaintiffs favor, finding Louisiana Revised Statutes 11:416.1 “constitutionally infirm.”³⁸ The Court found the statutory provision in violation of the Contract Clauses of both the United States and Louisiana Constitutions.³⁹ LASERS appealed the trial court’s decision directly to the Louisiana Supreme Court.⁴⁰

B. The Applicable Constitutional Protections of the Louisiana and United States Constitutions

On appeal to the Louisiana Supreme Court, several key issues of both federal and state constitutional law were presented. The Louisiana Supreme Court had to consider the Contract Clauses of the United States and Louisiana Constitutions, as the plaintiff claimed the Louisiana Revised Statutes 11:416.1 violated the Contract Clauses of the United States and Louisiana Constitutions. Additionally, the Court had an opportunity to define the true meaning of Article X, Section 29 of the Louisiana Constitution, which recognizes that membership in a statewide retirement system shall be contractual.⁴¹

37. Petition, *Smith v. LASERS*, 2002-2161 (La. 2003), 851 So. 2d 1100.

38. Minutes of the Court, Record at 2, *Smith*, 851 So. 2d 1100.

39. *Id.*

40. The Louisiana Constitution of 1974 grants the Louisiana Supreme Court jurisdiction over all cases in which “a law or ordinance has been declared unconstitutional.” La. Const. art. V, § 5(D)(1).

41. *Id.* art X, § 29.

1. The Contract Clauses of the United States and Louisiana Constitutions

The Contract Clauses of the United States and Louisiana Constitutions⁴² are virtually identical⁴³ and substantially equivalent.⁴⁴ While the language of the clauses is "facially absolute," the clauses must be interpreted to accommodate the "inherent police power of the state to safeguard the vital interest of its people."⁴⁵ The Contract Clause was initially the primary provision of the United States Constitution used to invalidate legislation that infringed on private property rights. The clause has lost some of its importance over the last century.⁴⁶ This is attributable largely to the rise of the use of the Due Process Clauses of the Fifth and Fourteenth Amendments.⁴⁷

The United States Supreme Court's most prominent early twentieth century Contract Clause case is *Home Building & Loan Association v. Blaisdell*.⁴⁸ In *Blaisdell*, the Supreme Court sustained a debtor relief law despite its retroactive impairment of obligations. Minnesota had enacted a law which allowed for the extension of home mortgages before a mortgage company could foreclose during the Great Depression. The mortgage company sued, claiming that the law violated the Contract Clause. In rejecting the mortgage company's contention, the Supreme Court recognized the state's power to enact legislation in emergency situations to protect the security of its people, even when such legislation impairs the obligation of contracts.⁴⁹

While the Court gave governments the power to impair contracts between private entities to protect the security of its people, just one year later the Court denied the government the power to impinge its

42. The United States Constitution states "[n]o state shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligations of Contracts" U.S. Const. art. I, § 10, cl. 1. The Louisiana Constitution of 1974 provides "[n]o bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be enacted." La. Const. art. I, § 23.

43. *Segura v. Frank*, 93-1271 (La. 1994), 630 So. 2d 714, 728.

44. *Bd. of Comm'rs of Orleans Levee Bd. Dist. v. Dep't of Natural Res.*, 496 So. 2d 281, 291 (La. 1986).

45. *Segura*, 630 So. 2d 714 (citing *Energy Reserves Group, Inc v. Kansas Power and Light Co.*, 459 U.S. 400, 410, 103 S. Ct. 697, 704 (1983)). These "vital interests" include the health, safety, and welfare of its citizens. Ronald D. Rotunda & John E. Nowak, *Treatise on Constitutional Law: Substance and Procedure* § 15.8 (3d ed. 1999).

46. See Rotunda & Nowak, *supra* note 45, § 15.8.

47. *Id.* ("During the Court's substantive due process era the contract clause faded in importance.").

48. 290 U.S. 398, 54 S. Ct. 231 (1934).

49. *Id.* at 424-30, 54 S. Ct. at 235-37.

own obligations in the Gold Clause cases.⁵⁰ The Gold Clause cases involved Congress's attempt to amend outstanding bonds. The bonds were issued as payable in gold. Congress amended a statute authorizing the bonds to be payable only in legal tender, thereby reducing the value of the bonds. The Court recognized the existence of a dual standard of review in Contract Clause cases when the government impinges its own obligations. The Court held there "is a clear distinction" between the power of Congress to regulate the contracts of private parties and to alter its own obligations.⁵¹ The Court went on to find that Congress had violated the Contracts Clause when it retroactively altered the essential terms of its own obligation.⁵²

The United States Supreme Court provided further guidance to courts who are forced to analyze Contract Clause questions when a government entity is a party in *United States Trust Company of New York v. New Jersey*.⁵³ In 1962, New York and New Jersey issued parallel statutes which limited the ability of the New York and New Jersey Port Authority to subsidize rail passenger transportation from other revenues.⁵⁴ The statutory covenant allowed the Port Authority to receive financing at a better interest rate because the statutes guaranteed that rail passenger transportation would not be a drain on the ability of the port authority to repay their debt obligations. In 1974, New York and New Jersey issued parallel statutes repealing the 1962 covenant. Following this, a trustee for the United States Trust Company, a holder of Port Authority bonds, filed suit claiming the statutory repeal was a violation of the Contract Clause.⁵⁵ The Court held that the Contract Clause prohibited the retroactive repeal of the 1962 covenant, finding when a state regulates its own obligation, it faces a different level of scrutiny than when it regulates the contracts of private individuals.⁵⁶ The Court then concluded that while the "Contract Clause does not require a State to adhere to a contract that surrenders an essential attribute of its sovereignty," a financial obligation is not an essential attribute of a state's sovereignty and can be bargained away by the legislature.⁵⁷ Even when a state retroactively alters an obligation which is not an essential attribute of

50. See *Perry v. United States*, 294 U.S. 330, 55 S. Ct. 432 (1935); *Norman v. Baltimore*, 294 U.S. 240, 55 S. Ct. 407 (1935); *Nortz v. United States*, 294 U.S. 317, 55 S. Ct. 428 (1935).

51. *Perry*, 294 U.S. at 352, 55 S. Ct. at 435.

52. *Id.*

53. 431 U.S. 1, 97 S. Ct. 1505 (1977).

54. *Id.* at 3, 97 S. Ct. at 1508.

55. *Id.*

56. *Id.* at 23, 97 S. Ct. at 1518.

57. *Id.* at 23-24, 97 S. Ct. at 1518-19.

the sovereignty of the state, there is not a per se violation of the Contract Clause.⁵⁸ A court must examine whether the impairment was "reasonable and necessary to serve an important public purpose."⁵⁹ While some deference is due to the state's legislative body, the courts should consider the "State's self interest."⁶⁰ After finding that the 1974 repeal was not reasonable and necessary, the Supreme Court ruled the 1974 repeal unconstitutional.⁶¹

Clearly, a dual standard exist for Contract Clause cases. When the state impinges its own obligation, the state action is more carefully scrutinized. Despite this strict scrutiny, the action may be considered a reasonable exercise of the state's police power if it is reasonably necessary to serve an important public purpose.

2. Article X, Section 29 of the Louisiana Constitution

Article X, Section 29 of the Louisiana Constitution (Section 29) recognizes a contractual relationship exists between the state and state employees who are enrolled in any statewide retirement system.⁶² Section 29 also recognizes that accrued benefits of members in the system shall not be diminished or impaired, and "future benefit provisions . . . shall be altered only by legislative enactment."⁶³ Section 29 was added during the 1974 Constitutional Convention as an attempt by the delegates of the State Constitutional Convention to afford increased protection to state employees.⁶⁴ The very nature of

58. *Id.* at 26, 97 S. Ct. at 1519.

59. *Id.* at 25, 97 S. Ct. at 1519.

60. *Id.* at 26, 97 S. Ct. at 1520.

61. 431 U.S. at 34, 97 S. Ct. at 1523.

62. La. Const. art. X, § 29(B) (emphasis added):

The legislature shall enact laws providing for retirement of officials and employees of the state, its agencies, and its political subdivisions, including persons employed jointly by state and federal agencies other than those in military service, through the establishment of one or more retirement systems. *Membership in any retirement system of the state or of a political subdivision thereof shall be a contractual relationship between employee and employer, and the state shall guarantee benefits payable to a member of a state retirement system or retiree or to his lawful beneficiary upon his death.*

63. *Id.* § 29(E)(5) ("The accrued benefits of members of any state or statewide public retirement system shall not be diminished or impaired. Future benefit provisions for members of the state and statewide public retirement system shall only be altered by legislative enactment.").

64. Lee Hargrave, "Statutory" and "Horatory" Provisions in the Louisiana Constitution of 1974, 43 La. L. Rev. 647, 674-75 (1983) ("Designating membership in a public retirement system 'a contractual relationship' is an attempt to invoke the constitutional protection against impairment of the obligation of contracts.").

state employment makes such a constitutional expression by the people of Louisiana understandable. Public employees enjoy increased benefits, including increased protection in retirement plans and further process before dismissal, in exchange for decreased pay compared to the private sector. The increased protection afforded public employees is an attempt by the people of the State to maintain a productive and efficient public workforce.⁶⁵

C. The Louisiana Supreme Court's Decision

Against the backdrop of the increased protection for public employees provided by Section 29 and the United States and Louisiana Contract Clauses, the Louisiana Supreme Court had to determine the constitutionality of Louisiana Revised Statutes 14:416.1. At first glance, it appeared the case would turn on the Court's contract clause analysis. However, the majority took an awkward path, focusing on the classification of the benefits provided by Louisiana Revised Statutes 14:416, downplaying the importance of its Contract Clause analysis.

1. The Majority: "Reemployment" Is Not Retirement

The Louisiana Supreme Court, in a five-to-two vote, reversed the lower court's ruling, finding Louisiana Revised Statutes 11:416.1 constitutional.⁶⁶ Justice Victory, writing for the majority, explained that Louisiana Revised Statutes 11:416.1 did not violate the Contract Clauses of the United States and Louisiana Constitutions because the plaintiffs had no vested right in the additional benefits provided under the previous law.⁶⁷ Because the plaintiffs' rights had not vested, the Court found that no contract existed. The Court explained that the plaintiffs could not have a vested right until the plaintiffs had been reemployed for twelve months.⁶⁸ The benefits were not part of the plaintiffs' retirement, the majority contended, but rather part of the plaintiffs' reemployment.⁶⁹ These reemployment benefits did not vest until the plaintiffs had been reemployed for twelve months, and until

65. *Id.* See also Andrew C. Mackenzie, *Spiller v. State: Determining the Nature of Public Employees' Rights to Their Pensions*, 46 Me. L. Rev. 355, 358. (1994).

66. *Smith v. LASERS*, 2002-2161 (La. 2003), 851 So. 2d 1100.

67. *Id.* at 1105. The Court looks to the legislative definition of vested rights, as "when a member obtains retirement eligibility as to the age and service in accordance with the provision of this chapter." Louisiana Revised Statutes 11:403(33).

68. *Smith*, 851 So. 2d at 1106.

69. *Id.* at 1107.

that point the legislature could freely modify the "details of a contributory retirement system."⁷⁰ The Court looked to earlier rulings propagating this rule, finding that courts have "consistently held that a public employee's right to retirement does not 'vest' until eligibility for retirement is attained, reemployed benefits for retirees likewise do not vest until eligibility as to age and service is attained."⁷¹

The Louisiana Supreme Court then outlined what it determined to be the correct standard to apply when a law potentially violates the Contract Clause, embracing the United States Supreme Court's decision in *Energy Reserves Group, Inc. v. Kansas Power and Light*.⁷² The Louisiana Supreme Court initially embraced the *Energy Reserves* framework in *Segura v. Frank*.⁷³ Applying the *Energy Reserves* analysis, the Court found that no contractual relationship existed between LASERS and the plaintiffs. Membership in a retirement system, the majority contended, did not create a contractual relationship until the party's rights in the system vest once age and service are met.⁷⁴ Under the facts of *LASERS*, the Court concluded that the plaintiffs' rights would not have vested until twelve months into reemployment.⁷⁵

Despite finding its "Contract Clause analysis is at an end"⁷⁶ because no contractual relationship existed, the Court curiously went on to examine the remainder of the *Energy Reserves* framework in a

70. *Id.*

71. *Id.* (citing *Patterson v. City of Baton Rouge*, 309 So. 2d 306 (La. 1975); *Faulk v. State*, 382 So. 2d 992 (La. App. 1st Cir. 1980); *State, ex rel. Murray v. Bd. of Trustees of Police Pension Fund for City of New Orleans*, 259 So. 2d 613 (La. App. 4th Cir. 1972); *Adolph v. Sewerage & Water Bd. Pension Comm.*, 202 So. 2d 664 (La. App. 4th Cir. 1967); *Young v. Dep't of Highways*, 160 So.2d 391 (La. App. 1st Cir. 1964); *Bowen v. Bd. of Trustees of Police Pension Fund*, 76 So. 2d 430 (La. App. Orl. 1954)). In all of these cases cited by the majority, the majority fails to recognize that the alterations to the retirement plans took place before the state employees retired. Here, the employees had retired, so even under the Court's outdated approach to retirement benefits, these cases are distinguishable.

72. *Id.* at 1109 (citing *Energy Reserves, Inc. v. Kansas Power and Light*, 459 U.S. 400, 103 S. Ct. 697). To be in violation of the Contract Clause, the Court must consider: (1) whether the law would impair a contractual relationship, (2) if the impairment is of "constitutional dimension," (3) whether a signification and legitimate public purpose exist to justify the regulation, and (4) whether the "adjustment of the rights and responsibilities of the contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the legislation's adoption." *Energy Reserves*, 459 U.S. at 410-13, 103 S. Ct. at 704-05.

73. 93-1271 (La. 1994), 630 So. 2d 714. In *Segura*, the Court upheld the retroactive application of legislation which impaired the obligation of contracts between private parties. *Id.*

74. *Smith*, 851 So. 2d at 1106.

75. *Id.* at 1108.

76. *Id.* at 1110.

footnote.⁷⁷ The Court recognized the gravity of the plaintiffs' decisions to retire from state service, but found that the impairment was not substantial, stating, "[s]tate regulation that restricts a party to the gains it reasonably expected from the contract does not necessarily constitute a substantial impairment."⁷⁸ The Court further determined that "any loss [the plaintiffs] suffered . . . was a known risk which they knowingly undertook."⁷⁹ Interestingly, the Court recognized that the plaintiffs suffered some detriment, but not of the constitutional dimension necessary to implicate constitutional concerns.

Despite finding no contractual relationship between the parties and no substantial impairment suffered by the plaintiffs, the Court continued still with its Contract Clause analysis.⁸⁰ Applying the third step of the *Energy Reserves* framework, the Court found that the plaintiffs suffered no detriment by enactment of Act 165.⁸¹ The Court also found that any leave the plaintiffs lost from annual or sick leave was credited to their retirement, and the provisions of Louisiana Revised Statutes 11:416.1 sufficiently provided for relief from all forms of harm that the plaintiffs may have suffered due to its enactment.⁸² The Court failed to recognize that some of the plaintiffs' sick and annual leave could not be transferred, and the plaintiffs lost all of their compensatory time. Why the Court continued its Contract Clause discussion after finding no contract existed is curious and leaves open the possibility that the Court was uncertain of its analysis of whether a contract existed.

2. *The Dissent*

Justice Knoll, joined by Justice Wiemer, dissented, finding three flaws with the majority's approach.⁸³ Justice Knoll first disagreed with the majority's assertion that the plaintiffs had no rights in the benefit provided for by Louisiana Revised Statutes 11:416.⁸⁴ The dissent contended the plaintiffs had contractually based rights in the

77. *Id.* at 1110 n.7 (outlining the four-step *Energy Reserves* Contract Clause analysis).

78. *Id.* (citing *Segura v. Frank*, 93-1271 (La. 1994), 630 So. 2d 714, 729). In *Segura*, the impairment was not substantial because the state regulation did not alter what the parties had reasonably expected to gain from the contract. *Id.*

79. *Id.*

80. *Id.* Perhaps the Court was unsure with regard to its determination the plaintiffs had no contractual right and wanted to continue with its Contract Clause analysis, eyeing a possible *writ of certiorari* by the plaintiffs to the United States Supreme Court.

81. *Id.*

82. *Id.*

83. *Id.* at 1111 (Knoll, J., dissenting).

84. *Id.* at 1111.

benefit provided by Louisiana Revised Statutes 11:416 at retirement pursuant to Article X, Section 29 of the Louisiana Constitution.⁸⁵ After recognizing the rights in Louisiana Revised Statutes 11:416 as contractually based, the dissent contended that the majority applied the incorrect Contract Clause analysis to the case.⁸⁶ Justice Knoll thought the majority failed to recognize that the State was modifying its own obligation and, consequently, applied the incorrect Contract Clause analysis. She believed the appropriate test was enunciated by the Supreme Court in *United States Trust Company v. New Jersey*.⁸⁷ After analyzing the case under the framework provided for in *United States Trust Company*, Justice Knoll concluded that a violation of the Contract Clauses of the United States and Louisiana Constitutions, in fact, did exist.

Concluding that the lower court's decision should be upheld, Justice Knoll outlined her disagreement with the majority's application of other states' precedent to the instant case.⁸⁸ Justice Knoll believed that the Court incorrectly relied on the Rhode Island case of *Retired Adjunct Professors of State of Rhode Island v. Lincoln C. Almond, Governor of State of Rhode Island*.⁸⁹ As evidence of the majority's erroneous reliance on the Rhode Island case, Justice Knoll pointed to other states which have recognized membership in retirement systems as evidence of the majority's incorrect reliance on *Retired Adjunct Professors*.⁹⁰

85. *Id.* The majority found that no vested right existed, deciding instead that the benefits offered under Louisiana Revised Statutes 11:416 were "reemployment benefits." Instead, Justice Knoll would have classified these benefits as "retirement benefit." *Id.* This was a clear attempt by Justice Knoll to classify the benefits provided by the statute in a manner which would provide the plaintiffs with the increased constitutional protection provided for by Article X, Section 29 of the Louisiana Constitution.

86. *Id.* at 1113.

87. 431 U.S. 1, 97 S. Ct. 1505 (1977). In *United States Trust Company*, the United States Supreme Court found the Contract Clause prohibited the repeal of a statutory covenant which guaranteed the Port Authority of New York/New Jersey's reserve fund from depletion. Had the repeal been allowed, the financing of certain bonds would have not been backed by the states. The Court found when a state impairs its own obligation, the Court must: (a) determine whether the state law operated as a substantial impairment of a contractual relationship and (b) determine whether the impairment is both reasonable and necessary to serve and important public purpose. *Id.*

88. *Smith*, 851 So. 2d at 1112.

89. 690 A.2d 1342 (R.I. 1997). The Louisiana Supreme Court used this case as persuasive authority in its determination the plaintiffs had no vested right in the matter. *Smith*, 851 So. 2d at 1113.

90. *Smith*, 851 So. 2d. at 1113 (Knoll, J., dissenting) (citing *Bailey v. North Carolina*, 500 S.E.2d 54 (N.C. 1998); *Oregon State Police Officers' Ass'n v. Oregon*, 918 P.2d 765 (Ore. 1996); *Booth v. Sims*, 456 S.E.2d 167 (W. Va. 1994); *Halpin v. Nebraska State Patrolmen's Retirement Sys.*, 320 N.W.2d 910 (Neb.

In sum, the majority and dissenting opinions in *LASERS* differ on three major points. First, the opinions differ as to the proper classification of the benefits provided for by Act 455. While the majority classified the benefits as reemployment benefits, subject to unconstrained legislative modification until the employee has been reemployed for twelve months, the dissent characterizes them as retirement benefits which became contractual when the plaintiffs initially retired. Inherent in this distinction is the Court's determination of when rights in retirement vest or when membership in a retirement plan should be considered contractual in nature. Secondly, the Court is divided as to which Contract's Clause standard should apply under the facts presented in *LASERS*. The dissent argued for a stricter Contracts Clause standard, operating from the premise that the State is altering its own obligation. The majority applied the Contract Clause test where the government action is impairing the obligation of private parties.⁹¹ Lastly, the Court differed as to the persuasiveness of the approaches adopted by various states. The majority looked to other states which continue to view public retirement plans as gratuities,⁹² while the dissent looked to jurisdictions which promulgate a more progressive view of retirement systems.⁹³ The following sections critically analyze these divergent approaches in an effort to identify the proper conceptualization of state employee retirement plans in Louisiana.

III. RETIREMENT VERSUS REEMPLOYMENT BENEFITS: THE COURT IMPORTS ADDITIONAL CRITERIA TO RECEIVE BENEFITS

According to the Louisiana Supreme Court, state workers in Louisiana have no rights to any benefit provided by a retirement system until the rights vest. Once rights vest, the Court has recognized that a contractual relationship exists between the beneficiary and the state. Typically, the courts have considered retirement (or eligibility to retire) as the critical component to the vesting of rights. Although the plaintiffs in this case had clearly retired, the Court found that the plaintiffs retirement benefit did not encompass the benefits outlined in Louisiana Revised Statutes 11:416. According to the Court, those benefits should be considered reemployment benefits which would not vest until the plaintiffs were reemployed for a certain time period.⁹⁴ Because the plaintiffs had no vested contractual right in these benefits, the legislature could modify

1982)). See *infra* notes 140–165.

91. *Smith*, 851 So. 2d at 1113–14 (Knoll, J., dissenting).

92. *Id.* at 1109.

93. *Id.* at 1113 (Knoll, J., dissenting).

94. *Id.* at 1110.

the provisions of Louisiana Revised Statutes 11:416 without implicating the Contract Clauses.

The Court erred when it embraced this logic, missing an opportunity to acknowledge the desire of the people of Louisiana as expressed in Article X, Section 29 of the Louisiana Constitution, to afford increased protection for state employees in statewide retirement systems. An increased level of protection provides state employees with *some* rights in their retirement before vesting, and this approach is followed by most other states which provides for constitutional protection of retirement benefits.⁹⁵ The Court instead embraced a confusing and somewhat arbitrary vision of retirement benefits as dependent upon whether the rights are considered to have accrued or vested. Most states have long abandoned this confusing determination and methodology.

A. Accrued and Vested Rights: The Court Embraces an Outdated View of Retirement Benefits

The Louisiana Supreme Court considered the essential component of *Smith v. LASERS* to be whether the rights of the plaintiffs had vested or accrued. The Court first determined the benefits provided under Act 455 were not part of the plaintiffs' retirement, but should be considered part of their reemployment.⁹⁶ After this unprecedented reclassification of the benefits provided to state workers, the Court looked to previous cases dealing with alterations to retirement plans for a determination of when reemployment rights actually vest.⁹⁷ The Court found that since the plaintiffs' benefits were part of a reemployment plan, rights in those plans of benefits would not vest until the employees ceased employment a second time or were reemployed for twelve months.⁹⁸ According to the Court, the plaintiffs could have no right in the benefit until they were actually receiving the benefit.

While the Court accepts that the plaintiffs' had retired, the Court decided that the benefits outlined in Louisiana Revised Statutes 11:416 were not part of the plaintiffs' retirement, but rather part of the plaintiffs' reemployment.⁹⁹ This distinction was essential for the

95. See *infra* Part IV.B.I.

96. *Smith*, 851 So. 2d at 1106.

97. Never before has the Court made this determination. In fact, "reemployment" is found nowhere in the Revised Statutes.

98. *Smith*, 851 So. 2d at 1107.

99. As noted by Justice Knoll in her dissent, Louisiana Revised Statutes 11:416.1 begins "a retiree who retired under the provisions of Act 455 of the Regular Session" and continues "any person who retired under the provisions of Act No. 455 of the 2001 Regular Session of the Legislature." *Id.* at 1111 (citing La. RS

Court, as the Court has long recognized that when rights vest, they cannot be altered or impaired without raising questions under the Contracts Clauses. In determining when rights vest, the Court relied on factually distinguishable precedent¹⁰⁰ and embraced an outdated, confusing standard. Under the Court's view, benefits from statewide retirement systems are mere gratuities from the State, susceptible to any legislative modification and afforded no protection from diminishment or impairment until the rights vest.

In reaching its conclusion in *Smith v. LASERS*, the Louisiana Supreme Court considered a line of cases which dealt with changes to retirement systems before the parties had retired.¹⁰¹ In these cases, the Court had found that the changes to retirement systems did not give rise to constitutional questions, as the parties had no rights in their future retirement benefits.¹⁰² Retirement, or eligibility to retire, the Court found, provides the necessary and essential component to consider retirement benefits as vested and, therefore, contractual.¹⁰³ All the cases cited by the majority are factually distinguishable from the current matter.¹⁰⁴ It is undisputed that the plaintiff in *LASERS* retired. The question instead is what benefits were provided in the plaintiffs' retirement. The Court held that the rights which accrued or became vested when the plaintiffs retired did not include the benefits provided under Louisiana Revised Statutes 11:416.¹⁰⁵ Citing *Sawicki v. K/S Stavenger Prince*,¹⁰⁶ the Court determined that those rights had not vested because vested rights must be absolute, complete and unconditional.¹⁰⁷ According to the Court in *Sawicki*, a "mere expectancy of future benefit . . . does not constitute a vested right."¹⁰⁸ The Court should not have imported this idea of a vested right into the current matter, as the cases are too factually distinct. *Sawicki* dealt with the retroactive application of legislation

11:416.1 (2004)).

100. These cases all dealt with changes *before* any retirement and are therefore different.

101. *Smith*, 851 So. 2d at 1107 (citing *Patterson v. City of Baton Rouge*, 309 So. 2d 306 (La. 1975); *Faulk v. State*, 382 So. 2d 992 (La. App. 1st Cir. 1980); *State, ex rel. Murray v. Bd. of Trustees of Police Pension Fund for City of New Orleans*, 259 So. 2d 613 (La. App. 4th Cir. 1972); *Adolph v. Sewerage & Water Bd. Pension Comm.*, 202 So. 2d 664 (La. App. 4th Cir. 1967); *Young v. Dep't of Highways*, 160 So. 2d 391 (La. App. 1st Cir. 1964); *Bowen v. Bd. of Trustees of Police Pension Fund*, 76 So. 2d 430 (La. App. Orl. 1954)).

102. *Id.* at 1107.

103. *Id.*

104. See *supra* note 71 (noting that in all the cases cited by the majority, the alterations in those cases took place before the plaintiffs had ever retired).

105. *Smith*, 851 So. 2d at 1110.

106. 2001-0528 (La. 2001), 802 So. 2d 598.

107. *Smith*, 851 So. 2d at 1106.

108. *Sawicki*, 802 So. 2d at 604.

prohibiting the enforcement of a forum selection clause and key to the determination was the point at which the claim vested. Instead of looking to *Sawicki*, the Court should have looked to factually analogous cases dealing with public retirement programs. In these cases, the Court has recognized a future benefit may be considered a vested right. In *Spragio v. Board of Trustees of State Employees Group Benefits Program*, a Louisiana court recognized that rights to retirement exist even if the rights may not be demanded.¹⁰⁹ In *Spragio*, the plaintiff ceased public employment at the age of forty-nine. He had met his service requirements. Despite having the required service, he could not receive benefits until he was fifty-five. Between the time he was able to receive benefits and the time he retired, the Board changed certain rules with regard to an insurance program. The Court found that the rights, although only future benefits and only a mere expectancy, had vested when the employee met the service requirements and retired.¹¹⁰ Any changes made after that point were of no consequence to the plaintiff because although the plaintiff could not demand the right, the rights could not be altered or impaired.

The problems associated with determining what rights are vested under a public retirement system are obvious, and the import of *Sawicki's* determination of a vested right may lead to additional confusion. Some rights are uncertain until some future date, even dependent upon the happening of certain events.¹¹¹ Additionally, to say that such rights do not exist and to import this into the realm of retirement benefits is to ignore the increased protection afforded by the Louisiana Constitution.¹¹² The Court's current approach places too heavy a reliance on the ability of the claimant to access the benefit instead of considering the claimant's right to the benefit. Additionally, to import the concept of reemployment into the

109. 468 So. 2d 1323 (La. App. 1st Cir. 1985), *cert denied*, 472 So. 2d 32 (La. 1985).

110. *Id.*

111. In fact, in the plaintiffs' brief for rehearing, the plaintiffs point out that many obligations only promise a future benefit, or the potential of a future benefit if the obligation still exists for other legal purposes. The plaintiffs point to certain financial instruments where the holder of a note does not have an immediate benefit, but a future one, as an example of one such obligation. Additionally, Louisiana has long recognized conditional or suspensive obligations may not be demanded until some future event. Plaintiffs' Brief for Rehearing, *Smith*, 851 So. 2d 1100.

112. The Louisiana Constitution of 1974 is filled with instances in which more protection is provided than provided under the federal constitution. For example, in *Tarpley v. Colfax Chronicle*, the Louisiana Supreme Court found that the Louisiana Constitution affords greater protection for freedom of speech and the press and the freedom to openly criticize the government. 94-2919 (La. 1995), 650 So. 2d 738.

determination of when rights vest further confuses an already confusing area of the law. While retirement is statutorily defined,¹¹³ reemployment is mentioned nowhere in the Revised Statutes.

The Court erred when it determined that the plaintiffs had no rights in the public retirement system. The determination of rights that the Court employed is outdated, confusing, and arbitrary. The Court should abandon the standard for considering the rights of public employees in public retirement systems utilized in *Smith v. LASERS* and move toward a more modern approach to public retirement systems. Not only would this give proper deference to the Louisiana Constitution, it would move Louisiana more in line with the view of public retirement systems expressed by other states that constitutionally recognize retirement benefits or membership in statewide retirement systems as contractual.¹¹⁴

B. The Proper Deference to Louisiana Constitution Article X, Section 29

The Court should have considered an approach which gives greater deference to the wording of Section 29, and abandoned the problematic “vested” and “accrued” determination. Instead of recognizing membership in public retirement systems as a mere gratuity, the Court should have recognized that some limited rights exist in membership itself. This approach has been recognized by most other states and would have given the proper deference to the Louisiana constitutional provisions addressing membership in statewide retirement systems. Louisiana’s Constitution recognizes the relationship between the State and employees who are enrolled in a statewide retirement system as a contractual relationship.¹¹⁵ The people of Louisiana expressed their desire to provide increased protection for state employees who enter into retirement systems through this provision.¹¹⁶ Instead of respecting the protection afforded by Section 29, the Court found that membership in the statewide retirement system does not occur until individuals have reached the age and service requirements for retirement. The Court relied on Section 29(e) which states the legislature may alter future benefit provisions.¹¹⁷ This view fails to consider the rationale underlying Section 29 and reads “future benefit provision” so broadly that any alteration to a public retirement system would be constitutionally permissible, therefore making the protection provided

113. Louisiana Revised Statutes 11:403(24) (2004).

114. See *infra* notes 137–165.

115. La. Const. art X, § 29.

116. Hargrave, *supra* note 64, at 675.

117. La. Const. art X, § 29.

by Section 29 useless. The constitutional language which provides for increased protection by state employees in retirement systems, according to the Court, leads to the same level of protection that the Court would provide if the language did not exist.¹¹⁸ Section 29, according to the Court's holding, is meaningless.

The rationale for enacting a constitutional provision recognizing membership in a statewide retirement system as contractual can easily be understood. The very nature of state employment is different from private employment. Public employees enjoy increased benefits, including increased protection in retirement plans through Section 29, in exchange for decreased pay as compared to the private sector.¹¹⁹ These added benefits are needed to maintain a productive and efficient public workforce. For the Court to not recognize this constitutional provision is a worrisome precedent.

Under the majority's view, the legislature may make changes to the retirement system *after* the employee's acceptance of the retirement, but before the receipt of payment, contrary to its own precedent.¹²⁰ The dissent takes a different approach, reading membership as creating the contract with the rights determined at retirement.¹²¹ Under both approaches, retirement plays a critical role. Under either approach, membership in a retirement system is still meaningless and Section 29 is still ignored. Instead of considering retirement as the essential act, the Court should consider membership as the essential act, as Section 29 defines. This approach would make retirement plans more than mere gratuities wholly susceptible of legislative modification as espoused in the majority opinion. Tangential changes to retirement systems could be sustained under the Contract Clauses and the State would still be allowed to repeal obligations under certain circumstances. This view would give proper deference to the language of the Louisiana Constitution, subjecting decisions regarding changes to public retirement systems to a scrutiny that the delegates of the Louisiana Constitution of 1974 intended, namely, that afforded by the Contract Clauses.¹²²

118. Indeed, in its decision, the Court relied on cases which held that a contractual right did not exist before retirement. These cases were all decided before the Louisiana Constitution of 1974, which provided for the increased protection, was adopted.

119. See Hargrave, *supra* note 64, at 675.

120. Plaintiffs Brief for Rehearing, *Smith v. LASERS*, 2002-2161 (La. 2003), 851 So. 2d 1100.

121. *Smith*, 851 So. 2d at 1113.

122. *Id.* at 1112 (Knoll, J., dissenting). As mentioned by Justice Knoll in the dissent, during the debate regarding Article X, Section 29, the delegates made clear they chose the "contractual relationship" language to invoke the protections afforded by the Louisiana and United States Constitutions to public retirement systems.

IV. CONTRACT CLAUSE ANALYSIS: DETERMINING THE CORRECT STANDARD TO APPLY

A. Correct Test v. Test Applied: The Court Takes Too Rigid an Approach to the Contract Clauses

Had the Court given more deference to the wording of the Louisiana Constitutions and recognized the increase protection afforded by Section 29, the Contract Clauses would have been critical in determining whether changes to statewide retirement systems are permissible. Both the majority and dissenting opinions address whether Louisiana Revised Statutes 11:416.1 violated the Contract Clauses of the United States and Louisiana Constitutions. The majority opinion, in finding that no contract existed, did little more than acknowledge most of its Contract Clause analysis.¹²³ The majority and dissenting opinions also applied different tests for determining the constitutionality of Louisiana Revised Statutes 11:416.1. The majority stated that “the appropriate Contract Clause standard” was enunciated by the Supreme Court in *Energy Reserves, Inc. v. Kansas Power and Light*.¹²⁴ The dissent recognized that a “dual standard of review” existed for impairment of contract cases¹²⁵ because when a state impairs its own contracts it faces a “more stringent examination under the Contract Clause than would laws regulating contractual relationships between private parties.”¹²⁶

As noted earlier, the United States Supreme Court has recognized that when a state impinges its own obligations or contracts, a different standard of review should be applied compared to when state action impinges obligations or contracts of private parties. The majority’s application of the *Energy Reserves* standard was erroneous, and the Court should have applied the two-part test outlined by the United States Supreme Court in *United States Trust Company*, as promulgated by the dissent.¹²⁷ As outlined in *United States Trust Company*, the Court should have initially considered whether the impairment was substantial. After determining that an impairment was substantial, the Court must consider whether the action was a

123. *Id.* at 1110 n.7.

124. *Id.* at 1109.

125. *Id.* at 1113 (Knoll, J., dissenting) (citing *United States Trust Company of New York v. New Jersey*, 431 U.S. 1, 26 n.25, 97 S. Ct. 1505, 1519 n.25 (1977) (citing *Perry v. United States*, 294 U.S. 330, 350–51, 55 S. Ct. 432, 435 (1935))).

126. *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 n.15, 98 S. Ct. 2716, 2722 n.15 (1978) (citing *United States Trust*, 431 U.S. at 22–23, 97 S. Ct. at 1517–18).

127. *Smith*, 851 So. 2d at 1113 (Knoll, J., dissenting).

permissible exercise of the State's power if it was reasonably necessary to serve an important public purpose, therefore preventing the state action from being declared in violation of the Contract Clause by the Court.

B. Applying the Correct Contract Clause Test

1. Substantial Impairment

When a state impairs its own obligation or contract, a court should first consider whether the impairment is substantial.¹²⁸ The majority found that the impairment was not substantial, stating, "state regulation that restricts a party to the gains it reasonably expected from the contract does not necessarily constitute a substantial impairment."¹²⁹ While concluding that this impairment was insubstantial, the Court provided no guidance with regard to what might constitute a substantial impairment. The dissent found that a substantial impairment did exist, supported by the plaintiffs' loss of 11,800 hours of compensatory time and the fact that the plaintiffs suffered financially from the enactment of Louisiana Revised Statutes 11:416.1.¹³⁰

In *Allied Steel Company v. Sapnnaus*, the United States Supreme Court reasoned that when a state alters its own obligation, reliance by the parties is paramount when considering whether the enactment of a new law acted as a substantial impairment.¹³¹ Here, the plaintiffs clearly relied on the repealed statute when deciding to retire. The plaintiffs testified that they relied on the provision of the statute to plan for their future, some consulting with their personal accountants.¹³² In fact, reliance by the plaintiffs was never an issue in the case. The wording of the statute was the sole reason the plaintiffs retired. The plaintiffs' motivation, to take advantage of the law which was drafted, debated, and adopted in their benefit, does not make their reliance any less important, and the impairment any less substantial. The economic benefits of their compensatory time, losing of accrued sick and annual leave, and changes to the timing of some of their retirements are impairments which the plaintiffs

128. See *Allied Structural Steel*, 438 U.S. at 244 n.15, 98 S. Ct. at 2722.

129. *Smith*, 851 So. 2d at 1110 n.7 (citing *Segura v. Frank*, 93-1271 (La. 1994), 630 So. 2d 714, 729 (citing *Energy Reserves, Inc. v. Kansas Power and Light Co.*, 459 U.S. 400, 411, 103 S. Ct. 697, 704). It is important to note that besides clearly broadly applying this language, *Energy Reserves* and *Segura* dealt with impairments to private party contracts, not a relationship between the state and private parties.

130. *Smith*, 851 So. 2d at 1117 (Knoll, J., dissenting).

131. *Allied Structural Steel*, 438 U.S. at 244, 98 S. Ct. at 2722.

132. Record at 103, *Smith*, 851 So. 2d 1100 (testimony of Gregg Smith).

suffered through the enacting Louisiana Revised Statutes 11:416.1. The legislature hindered the plaintiffs' financial and economic interest as the plaintiffs reasonably relied on the language of Louisiana Revised Statutes 11:416 pursuant to Act 455. Clearly, the plaintiffs suffered a substantial impairment due to the enactment of Louisiana Revised Statutes 11:416.1.

2. *Reasonably Necessary*

Under the second and final step in the Contract Clause analysis for public entities, the Court should consider whether the impairment is "reasonable and necessary to serve an important public purpose."¹³³ The impairment of a contract may be saved from being declared unconstitutional as the protections afforded by the Contract Clauses of the Louisiana and United States Constitutions are not absolute. In this determination, the Court should consider whether a less drastic modification would have been sufficient to achieve the governments goals.¹³⁴ A state retains the authority to enact laws to "safeguard the vital interest of [its] people," and states are given great deference in determining whether the legislation altering an obligation is reasonable and necessary.¹³⁵ However, this deference should be considered in light of the fact that the state's self interest is often at stake.¹³⁶

The dissent notes that the majority did not address whether the impairment was reasonable and necessary and goes on to find the modification unreasonable and unnecessary because a less drastic modification would have sufficiently achieved the state's objectives.¹³⁷ The financial miscalculations which led to the enactment of Louisiana Revised Statutes 11:416.1 did not make its enactment reasonable and necessary. The legislature could have, and did by amending Louisiana Revised Statutes 11:416, simply altered the law for future beneficiaries. The financial miscalculation was not so severe as to bankrupt or financially impair LASERS, as LASERS own counsel stated that the under-estimation did not threaten the actuarial soundness of LASERS.¹³⁸

133. *United States Trust Company of New York v. New Jersey*, 431 U.S. 1, 25, 97 S. Ct. 1505, 1519 (1977).

134. *See* Hargrave, *supra* note 64, at 675.

135. *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 54 S. Ct. 231 (1934).

136. *United States Trust Company of New York*, 431 U.S. at 25, 97 S. Ct. at 1519.

137. *Smith v. LASERS*, 2002-2161 (La. 2003), 851 So. 2d 1100, 1117 (Knoll, J., dissenting).

138. *Id.* (citing LASERS counsel at oral arguments).

V. CONSIDERING OTHER STATES: INCREASED PROTECTION FOR STATE EMPLOYEES

A. *The Court's Reliance on Other States*

Lastly, both the majority and the dissent looked to the experience of other states to support their positions. The majority looked to other states to show that enrollment in retirement systems should not be recognized as contractual obligations.¹³⁹ According to the majority's approach, and the cases cited, the essential component of a retirement plan becoming contractual in nature is vesting.¹⁴⁰ Vesting occurs, according to the Louisiana Supreme Court, when the age and service requirements are met. The dissent looked to other states to combat the majority's assertion that retirement systems should not be recognized as contractual obligations before age and service is met. The dissent recognized that most states have abandoned the gratuity approach to public pensions which the majority embraces.¹⁴¹

The majority relied heavily on *Retired Professors of Rhode Island*.¹⁴² This reliance was misplaced for several reasons. The Rhode Island Supreme Court in *Retired Professors of Rhode Island* held that the state General Assembly could modify the number of hours that retired professors could work before losing their eligibility to receive their pension. The case is factually similar to *Smith v. LASERS*. However, the Louisiana Supreme Court failed to acknowledge that the opinion in *Retired Professors of Rhode Island* has been limited by several subsequent decisions, both by Rhode Island and federal courts.¹⁴³ Additionally, the Court failed to

139. *Id.* at 1109.

140. *Id.* The Louisiana Supreme Court "has never utilized a Contract Clause analysis to invalidate changes to the state's retirement system which did not take away vested rights." *Id.* The *Smith* court cited *Retired Adjunct Professors of Rhode Island v. Almond, Governor of Rhode Island*, where the Rhode Island Supreme Court found "that converting the reemployment opportunities formerly available to these public pensioners into legally enforceable contract rights would 'play havoc with the basic principals of contract law, traditional contract clause analysis, and, most importantly, the fundamental legislative prerogative to reserve to itself the implicit power of statutory amendment and modification.'" 690 A.2d 1342, 1346 (R.I. 1997).

141. *Smith*, 851 So. 2d at 1114 (Knoll, J., dissenting).

142. *Retired Adjunct Professors*, 690 A.2d 1342.

143. See *Nonnenmacher v. City of Warwick*, 97 WL839913 (R.I. Super. 1997) (finding that the Contracts Clause applied when the state government altered benefits to retired, disabled firefighters); *Nat'l Educ. Ass'n v. Retirement Bd. of the Rhode Island Employees Retirement Sys.*, 972 F. Supp. 100 (D.R.I. 1997), *vacated* by 172 F.3d 22 (1st Cir. 1999), *cert. denied* by *Casey v. Retirement Bd. of the Rhode Island Employees Retirement Sys.*, 528 U.S. 929, 120 S. Ct. 326 (1999)

acknowledge that the Rhode Island Supreme Court relied extensively on Rhode Island's lack of a statutory directive classifying benefits as contractual in nature.¹⁴⁴ The Rhode Island Supreme Court forewent a Contracts Clause analysis, finding the state legislature was acting within its power when it reserved the power to modify the retirement plan of state workers.¹⁴⁵ Through Article X, Section 29 of the Louisiana Constitution, Louisiana has unequivocally surrendered this "fundamental legislative prerogative." The Louisiana Supreme Court should have not considered Rhode Island as such persuasive authority. Considering Louisiana's constitutional recognition of membership in retirement plans as contractual, the Court should have considered decisions from states with similar constitutional or statutory protections.

B. Considering Other States: A More Comprehensive Look

1. States Move Away from Gratuity Approach

The determination of how to treat public employees' rights to pensions has been part of the judicial landscape since the late nineteenth century. In *Pennie v. Reis*, the United States Supreme Court found that pension plans are a "mere expectancy created by the law and liable to be revoked or destroyed by the same authority."¹⁴⁶ Most state courts adopted this view, finding pensions as "gratuities," subject to legislative modification without regard to the employees' interest.¹⁴⁷ However, over the course of the twentieth century, the overwhelming majority of jurisdictions abandoned this view.¹⁴⁸ Today, only two states adhere strictly to the gratuity approach.¹⁴⁹ Some jurisdictions employ the view adopted by the Louisiana Supreme Court and do not recognize retirement benefits as

(holding that the Rhode Island General Assembly violated the Contract Clause by enacting legislation which terminated the plaintiffs' membership in a statewide retirement system).

144. *Retired Adjunct Professors*, 690 A.2d. at 1345. The dissent in *Smith* mentions this lack of afforded protection. *Smith*, 851 So. 2d at 1112 n.3 (Knoll, J., dissenting).

145. *Retired Adjunct Professors*, 690 A.2d 1342. The Court found the alteration was an expression of the "fundamental legislative prerogative to reserve to itself the implicit power of statutory amendment and modification," and this was the most important reason to forego a Contract Clause analysis. *Id.* at 1346.

146. 132 U.S. 464, 471, 10 S. Ct. 1049, 1051 (1889).

147. Mackenzie, *supra* note 65, at 358.

148. *Id.* at 359.

149. Only Texas and Indiana currently adhere to the gratuity approach. *Id.* See *Ballard v. Bd. of Trustees of Police Pension Fund*, 324 N.E.2d 813 (Ind. 1975); *Cook v. Employees Retirement Sys.*, 514 S.W.2d 329 (Tex. Ct. App. 1974).

contractual until the rights have vested at retirement.¹⁵⁰ Most states have rejected the gratuity approach altogether, believing the gratuity approach offers inadequate protection for state employees' pensions.¹⁵¹ These states provide some form of increased protection against the alteration of retirement benefits by the legislature.¹⁵²

2. States with Added Protection

Most states give more protection to employees' rights to pensions than the Louisiana Supreme Court afforded the plaintiffs in *Smith*. Of the states which offer increase protection, five states besides Louisiana have constitutional provisions providing for protection of retirement benefits: New York, Illinois, Alaska, Hawaii and Michigan.¹⁵³ Michigan's constitutional provision¹⁵⁴ is facially different than Louisiana's, recognizing only the protection of accrued benefits. New York, Illinois, Hawaii, and Alaska have provisions which are similar to Article X, Section 29 Louisiana's Constitution.

The provisions of the New York and Illinois constitutions facially provide the greatest protection of public retirement systems and both have been interpreted broadly. New York's constitutional provision¹⁵⁵ has been interpreted to recognize membership in a retirement system as contractual in nature the moment the employee become a member of the system.¹⁵⁶ The legislature cannot reduce

150. Mackenzie, *supra* note 65, at 359 n.21.

151. This view is epitomized by the recent Nevada Supreme Court decision, *Nicholas v. State*, 992 P.2d 262 (Nev. 2002). In *Nicholas*, the Nevada Supreme Court had to decide whether former members of the Nevada legislature were entitled to certain retirement benefits. Certain members of the legislature retired under a bill which provided for quadruple the retirement benefits previously provided. Public outrage was so high that the Governor of Nevada called a special legislative session for the sole purpose of repealing the law. Between the time the law was enacted and repealed, the plaintiffs in *Nicholas* retired. The Court found that public pensions are limited rights until retirement, at which time they cannot be impaired without facing constitutional scrutiny. *Id.* at 265.

152. Mackenzie, *supra* note 65, at 360.

153. Ridgeley A. Scott, *A Skunk at a Garden Party: Remedies for Participants in State and Local Pension Plans*, 75 Denver U.L. Rev 507, 514 (1998). See also Darryl B. Simko, *Of Public Pensions, State Constitutional Contract Protection and Fiscal Restraint*, 69 Temple L. Rev. 1059 (1996).

154. Mi. Const. art. 9, § 24 ("The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.").

155. N.Y. Const. Art. V, § 7 ("After July first, nineteen hundred forty, membership in any pension or retirement system of the state or of a civil division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired.").

156. *Birbaun v. New York State Teachers' Retirement Sys.*, 152 N.E.2d 241, 245 (N.Y. 1958) (holding that the purpose of the constitutional protection is

benefits or alter contributions.¹⁵⁷ The Illinois constitutional provision recognizing that membership in a statewide retirement system is contractual in nature was modeled after New York's¹⁵⁸ and employs similar language.¹⁵⁹ Like New York courts, the Illinois judiciary has interpreted this provision as a mandate not to allow the legislature to reduce benefits without being in violation of the Contract Clause of the federal and state constitutions.¹⁶⁰ The Illinois courts also recognize that a public employees has a "vested right" in the pension at the time they enter the system, when the employee started to contribute to the public retirement system.¹⁶¹ Entering the system has been defined by both states as when the employee starts to contribute to the public retirement system. Hawaii and Alaska have similar constitutional provisions. Hawaii's constitutional provision¹⁶² has not been judicially developed. However, the Alaska constitution¹⁶³ has been developed. Alaska's courts have also recognized that a contractual relationship between a public employee and the State begins when the employee enters or begins to contribute to the system, not when the employee becomes eligible to receive such benefits.¹⁶⁴ Despite recognizing the relationship as contractual, the Alaska courts have limited this, finding that "reasonable modifications are permissible."¹⁶⁵ Alaska's courts are giving the proper deference to the Contract Clause, and *United States Trust Company* standard outlined by the United States Supreme Court.

membership in any pension or retirement system of state was a contractual relationship the moment the employee became a member of system).

157. *McDermott v. McDermott*, 507 N.Y.S.2d 390, 398–99 (N.Y. App. Div. 1986).

158. Scott, *supra* note 153, at 514.

159. Ill. Const. art. XIII, § 5 ("Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.").

160. *Felt v. Bd. of Trustees of Judges Retirement Sys.*, 481 N.E. 2d 698, 699–700 (Ill. 1985) (upholding a lower court's determination that an amendment to the Illinois Pension Code was unconstitutional as applied to sitting judges, but allowing modification to the retirement system for persons becoming judges after the amendment was enacted).

161. *Bosco v. Chicago Transit Auth.*, 164 F. Supp. 2d 1040 (N.D. Ill. 2001).

162. Hi. Const. art. 16, § 2 ("Membership in any employees' retirement system of the State or any political subdivision thereof shall be a contractual relationship, the accrued benefits of which shall not be diminished or impaired.").

163. Alaska Const. art. XII, § 7 ("Membership in employee retirement systems of the State or its political subdivisions shall constitute a contractual relationship. Accrued benefits of these systems shall not be diminished or impaired.").

164. *Hammond v. Hoffbeck*, 627 P.2d 1052, 1057 (Alaska 1981).

165. *Duncan v. Retired Public Employees of Alaska, Inc.*, 71 P.3d 882, 886 (Alaska 2003).

Considering these states have constitutional provisions recognizing members in statewide public retirement systems as contractual, it is curious why the Court did not consider any of these states' views. None of the states bind the hands of their legislatures from enacting changes to the retirement system, but simply recognize the increased protection that their respective constitutions provide, allowing the legislature to modify benefits for future public employees. Additionally, the other jurisdictions recognize *membership* as the critical factor in creating a contractual relationship, with membership occurring at the onset of employment. Had the Louisiana Supreme Court looked for guidance from these states, it would have embraced an identical approach and would have provided the protection the delegates of the Louisiana Constitutional Convention of 1974 intended.

CONCLUSION

In *Smith v. LASERS*, the Louisiana Supreme Court chose to ignore the increased protection provided to public employees provided by the Louisiana Constitution. Additionally, the Court, while embracing the incorrect Contract Clause analysis, adopted an outdated view of public retirements systems. Public employees in Louisiana do not have rights in their retirement as provided for by other states despite a constitutional expression to the contrary. By embracing the view that the constitutional expression aimed to provide public employees retirement benefits did not afford greater protection to public employees, the Court has set a dangerous and worrisome precedent.

*Michael A. Cancienne**

* J.D./B.C.L. Candidate, May 2006, Paul M. Hebert Law Center, Louisiana State University; M.B.A. Candidate, Louisiana State University, 2005.

The author would like to thank Professor Paul Baier, George M. Armstrong, Jr. Professor at the Paul M. Hebert Law Center, and Celia Cangelosi for help in developing this topic.